

Exhibit 9

EngstromE_093004 (ROUGH).txt

12 A. Yes, could likely be made into once at least.

13 Q. why do you say that?

14 A. Because it has APIs and functionality for
15 delivering applications which more people make money.
16 You could imagine hosting any number of applications
17 and you see that on the web today.

18 Q. Sure.

19 A. And you don't see examples of applications
20 around media today.

21 Q. Media playbacks standing alone?

22 A. Yes.

23 Q. Now, if Real had developed and marketed a
24 browser in 1997, that would have made Real a platform
25 competitor as you thought about it?

622-6875 * 1 (800) 831-6973 Yamaguchi Obien Mangio, LLC * www.yomreporting.com
520 Pike Street, Suite 1320, Seattle, Washington 98101 * (206)
‡

95

1 MS. HARRIS: Objection. Lack of foundation,
2 calls for speculation, vague and ambiguous.

3 A. Yes, I believe that.

4 Q. (BY MR. HOSIE) Sir, do you recall that
5 Microsoft entered into two written agreements with
6 RealNetworks in the summer of 1997?

7 A. I believe so, yes. I believe there were two.

8 Q. Were you involved in negotiating either of
9 those two agreements?

10 A. No.

11 Q. No involvement at all?

12 A. I provided a shopping list of features. I was
13 working on what I thought was going to be a deal with

EngstromE_093004 (ROUGH).txt

14 RealNetworks, and in the end that was set to one side.

15 My shopping list was incorporated in it but I was no

16 part of the negotiations on either of those deals.

17 Q. Do you recall asking Chris Phillips who worked

18 for you to go forth and negotiate with Real in late

19 March 1997?

20 MS. HARRIS: Objection. Vague and ambiguous.

21 A. I do not remember the exact date or time, but

22 Chris Phillips was absolutely negotiating with

23 RealNetworks. But that ended up being on our shopping

24 list. It was not part of the actual deal that was

25 signed. Everything we were doing was flipped aside.

622-6875 * 1 (800) 831-6973
Yamaguchi Obien Mangio, LLC * www.yomreporting.com
520 Pike Street, Suite 1320, Seattle, Washington 98101 * (206)

96

1 Q. (BY MR. HOSIE) Did you ask Chris Phillips to
2 go negotiate with Real?

3 A. Yes.

4 Q. And you recall he actually did meet many times
5 with RealNetworks representatives?

6 MS. HARRIS: Objection. Vague and ambiguous.

7 A. I believe he met many times with them, as I
8 did.

9 Q. (BY MR. HOSIE) And in the course of
10 negotiating these contracts?

11 A. Not in the case of negotiating the contracts
12 that were signed.

13 Q. Because there were changes at the last minute
14 and something different was signed?

EngstromE_093004 (ROUGH).txt

15 A. No, sir, you're incorrect. The document that
16 I worked on was never used as the basis, it was used
17 literally like a shopping list.

18 Q. When you say the document, what document are
19 you referring to?

20 A. The list of things we made, which I think is
21 mostly in e-mail, in fact, I think it's entirely in
22 e-mail, that says here are the things that we're trying
23 to get done with Real.

24 Q. I didn't mean to cut you off. Go ahead.

25 A. That's it.

Yamaguchi Obien Mangio, LLC * www.yomreporting.com
520 Pike Street, Suite 1320, Seattle, Washington 98101 * (206)
622-6875 * 1 (800) 831-6973
‡

97

1 Q. What were you trying to get from Real?

2 A. We were trying to get them to use our windows
3 infrastructure to make their player so that a file
4 extension would not be a problem for the customer so
5 they could playback our content as well as their own
6 and their own brand of player, and so the future
7 versions of windows wouldn't have any backward
8 compatibility issues with their different players.
9 There's a fourth point as well that would shrink the
10 download size which mattered at the time of IE because
11 it was downloaded over a tiny little pipe.

12 Q. Narrow bandwidth problems?

13 A. Yes.

14 Q. Okay. And so as you understood it, these
15 items were communicated by Chris Phillips to folks at
16 RealNetworks?

EngstromE_093004 (ROUGH).txt

11 about the first sentence which says, Eric Engstrom
12 pleaded his case to Bob Muglia last night. It looks
13 like Bob will get more involved.

14 Do you remember asking Bob Muglia to get more
15 involved in the RealNetworks conversations on July 2nd?

16 A. Actually, prior to that I believe, if I have
17 my dates right, Paul Maritz told all of us that our
18 relationship with Progressive Networks was -- had too
19 many fronts, and took it all over. That was how the
20 first deal got done. I believe on this date the first
21 deal was then. He then had to go on vacation or
22 something and handed it to Bob Muglia. So as you can
23 see here in this mail, my discussions on the
24 Progressive Networks thing were with Muglia because the
25 deal with Maritz was done before he took my shopping

Yamaguchi Obien Mangio, LLC * www.yomreporting.com
520 Pike Street, Suite 1320, Seattle, Washington 98101 * (206)
622-6875 * 1 (800) 831-6973

♀

115

1 list and went and did the deal without talking to me.

2 Q. That was the first of the two deals?

3 A. The first deal. This was before the second
4 deal, I believe, if I have my time lines correct, which
5 I'm not terribly good at. So this mail just shows that
6 I took my wish list which I thought Progressive
7 Networks was going to try to confuse Bob out of since
8 he didn't know what was going on and didn't understand
9 the technical issues, and so I went to Bob Muglia, gave
10 him the wish list and explained it was all important,
11 and then I walked out.

EngstromE_093004 (ROUGH).txt

12 Q. Leaving it in his hands?

13 A. Yes.

14 Q. And that was July 2nd, according to this
15 e-mail?

16 A. Apparently it was July 2nd.

17 Q. Do you have any reason to believe that this
18 e-mail is inaccurate about that date?

19 A. No.

20 Q. The second deal, that was known as the ASF
21 deal?

22 A. I don't know. I don't know what it was
23 called.

24 Q. It was called on occasion the Chris Phillips
25 deal, isn't that true?

622-6875 * 1 (800) 831-6973 Yamaguchi Obien Mangio, LLC * www.yomreporting.com
520 Pike Street, Suite 1320, Seattle, Washington 98101 * (206)
‡

116

1 A. I believe that's possible, yes.

2 Q. Why do you say that that's possible?

3 A. Because Chris manages to get his name attached
4 to many things he's not involved in, unfortunately for
5 him.

6 Q. Sort of Johnny Appleseed of contract monikers?

7 A. Yes.

8 Q. Let me show you what's been marked as Exhibit
9 21.

10 (Deposition Exhibit No. 21 was marked for
11 identification.)

12 Q. (BY MR. HOSIE) I'm going to focus your
13 attention, Eric, on the e-mail you sent on July 5th to
Page 110

EngstromE_093004 (ROUGH).txt

- 6 Q. And you were asked on page 88, what search
7 terms did you use in making that search?
8 A. Yes.
9 Q. And your answer was Apple. I think that's the
10 only one I've actually been asked to do.
11 A. Yes. And then I go on to clarify that it was
12 actually a whole host of words around Apple.
13 Q. Like Apple computer, Quicktime?
14 A. Steve Jobs, Tim Schaaff.
15 Q. All Apple stuff?
16 A. All Apple stuff.
17 Q. And then if you look to page 89, the question,
18 you weren't asked to search for RealNetworks or
19 streaming in general? And your answer was, I wasn't
20 asked to, no.
21 A. Right.
22 Q. Is that accurate testimony at the time, sir?
23 A. Yes.
24 Q. Does this refresh your recollection?
25 A. Yes.

622-6875 * 1 (800) 831-6973 Yamaguchi Obien Mangio, LLC * www.yomreporting.com
520 Pike Street, Suite 1320, Seattle, Washington 98101 * (206)

†

133

1 MR. HOSIE: I have nothing further.

2

3 EXAMINATION

4

5 BY MS. HARRIS:

6 Q. I have a few questions.

7 Mr. Engstrom, earlier you testified that you
Page 126

EngstromE_093004 (ROUGH).txt

8 and Chris Phillips had discussions with RealNetworks in
9 the spring of 1997. Do you recall that testimony?

10 A. That's the -- sorry.

11 Q. I'll restate the question. You testified
12 earlier that you and Chris Phillips had discussions
13 with RealNetworks in the spring of 1997. Do you recall
14 that testimony?

15 A. Yes.

16 Q. Did those discussions end at some point in
17 time?

18 A. Yes.

19 Q. Do you recall when that was?

20 A. Those discussions were centered around trying
21 to make a deal on the player. Those discussions ended
22 as far as deal negotiations go when Paul Maritz went
23 and did a deal with RealNetworks without our
24 involvement and issued the statements that basically
25 all deals are going to flow through me through

Yamaguchi Obien Mangio, LLC * www.yomreporting.com
520 Pike Street, Suite 1320, Seattle, Washington 98101 * (206)
622-6875 * 1 (800) 831-6973

134

1 RealNetworks because he's confusing us as a company.

2 Q. When you refer to a deal that Paul Maritz did,
3 do you have an understanding of whether that was the
4 first Real contract in the summer of 1997?

5 A. Well, there was a deal prior to that that was
6 just for distribution, so to be canonical, there was
7 another contract to distribute RealNetworks and IE
8 before that. But the Maritz deal was the deal

EngstromE_093004 (ROUGH).txt

9 everybody talks about as the first RealNetworks deal, I
10 believe?

11 Q. And do you recall if that would have been in
12 June of 1997?

13 A. I believe that's when it happened, yes. I was
14 notified after it was done.

15 Q. Did you participate in the negotiation of that
16 contract in any way?

17 A. I did not. I provided my wish list and that
18 was it. I was not in the room and I was not even aware
19 it was being done.

20 Q. Are you aware of whether Chris Phillips
21 participated in the negotiation of that deal at all?

22 A. I think that Chris Phillips specifically was
23 not. He was as surprised as I was.

24 Q. With respect to -- then -- I believe you
25 testified earlier there was a second contract with

Yamaguchi Obien Mangio, LLC * www.yomreporting.com
520 Pike Street, Suite 1320, Seattle, Washington 98101 * (206)
622-6875 * 1 (800) 831-6973
♀

135

1 RealNetworks in the summer in July of 1997?

2 A. I believe that's true, yes.

3 Q. Did you participate in the negotiation of that
4 second contract with RealNetworks?

5 A. No, that was Bob Muglia. I participated only
6 by educating Bob on the issues.

7 Q. Did Chris Phillips participate in negotiating
8 that second deal with RealNetworks?

9 A. No. That was Bob Muglia.

10 Q. Did you have any front line responsibility for
Page 128

EngstromE_093004 (ROUGH).txt

11 discussions with RealNetworks with respect to either of
12 those?

13 MR. HOSIE: Objection. Vague and ambiguous.
14 Front line.

15 A. I mean, let me see if I can answer this. I
16 spoke directly to RealNetworks frequently in that
17 period about technical issues. I got mail from them
18 frequently. Some of that mail even included deal
19 points that were discussed. The reason that I never
20 responded to those pieces of mail negatively even
21 though they would send me deal points is because
22 obviously we did not want to communicate to
23 RealNetworks what we were actually doing internally.

24 My conversations with Mr. Glaser and
25 RealNetworks was all about the technology issues and

Yamaguchi Obien Mangio, LLC * www.yomreporting.com
520 Pike Street, Suite 1320, Seattle, Washington 98101 * (206)
622-6875 * 1 (800) 831-6973
‡

136

1 the platform adoption issues I've discussed previously.
2 From the time that Paul Maritz did that deal forward, I
3 had no business negotiations and I had no business
4 negotiations involved in the deal that Paul Maritz did.

5 Q. (BY MS. HARRIS) And when you say the deal
6 that Paul Maritz did, you're talking about the June
7 1997 contract?

8 A. Yes.

9 Q. How would you characterize your involvement
10 the final -- in either of the two RealNetworks final
11 contracts?

EngstromE_093004 (ROUGH).txt

12 A. Zero.

13 Q. How would you characterize Chris Phillips's
14 involvement in either of the two contracts with Real
15 that were finalized?

16 A. Zero.

17 Q. Earlier you testified that in early June --
18 I'm sorry, early July of 1997 you and Chris were
19 working on the deal. Do you still believe that
20 testimony is correct?

21 A. No, I was confused on the dates, and I
22 apologize for that. Sometimes I use the wrong word to
23 describe what is actually a deal. What Chris Phillips
24 and I were working on in July was the technology piece
25 that we're still involved in, not the terms of the

622-6875 * 1 (800) 831-6973 Yamaguchi Obien Mangio, LLC * www.yomreporting.com
‡ 520 Pike Street, Suite 1320, Seattle, Washington 98101 * (206)

137

1 agreement, just providing our list and educating Muglia
2 on what we wanted.

3 Q. Do you have an understanding why after
4 Mr. Maritz started the discussions with RealNetworks,
5 why you would have received e-mails from Bruce Jacobsen
6 after that point in time?

7 A. Of course. There was no way that any of us
8 wanted to communicate to Bruce Jacobsen that basically
9 we had been completely overridden and had no authority
10 to deal with him anymore since at the end of the day we
11 would in fact be held responsible for managing the
12 account anyway. So I continued to respond but we never
13 did any business negotiations. It was all about